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Opinion

April 29, 1974

Mr. Frank E. Whaland, Commissioner
Insurance Department
78 North Main Street
Concord, New Hampshire 03301

Dear Commissioner Whaland:

In a letter dated February 12, 1974, you have asked whether you have the authority to adopt a proposal to amend Insurance Regulation No. 4. This proposal would authorize issuance and delivery in New Hampshire by insurance companies of group life insurance policies and group accident and health insurance policies thirty days subsequent to the date they have been filed with the Commissioner, in the absence of affirmative disapproval by the Commissioner. The proposal contrasts with the current regulation, the effect of which you have stated is to require the Department to read each line of each such policy and affirmatively to approve each policy before the policy can be issued and delivered in New Hampshire. With the proposal in its present form, the answer to your question is "no," for the reasons set out herein.

While RSA 400-A:3 (supp) and RSA 400-A:15, I (supp) grant to the Commissioner authority to make and amend regulations, including such authority to do so as can be reasonably "implied," said delegation from the Legislature is granted solely in terms of, and to carry out the duties prescribed in, the specific statutes in the insurance title. The statutes in this title relating to group life insurance and group accident and health insurance include RSA 408:16 and RSA 415:18, I (supp), respectively. RSA 408:16 describes ten insurance policy provisions prefaced, in pertinent part, by the following:

No policy of group life insurance shall be
delivered in this state unless it contains in

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substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder
[Emphasis added.]

RSA 415:18, I (supp) describes fourteen insurance policy provisions prefaced, in pertinent part, by the following:

No policy of group . . . accident and health insurance . . . shall . . . be delivered or issued for delivery in this state unless the policy contains in substance each and all of the provisions set forth in the following paragraphs or provisions which in the opinion of the commissioner are more favorable to the holders of such certificates or not less favorable to the holders of such certificates and more favorable to policyholders: [Emphasis added.]

Thus, the Commissioner is required to formulate an affirmative opinion with respect to any group life insurance or group accident and health insurance policy which does not contain in substance the provisions described in RSA 408:16 or RSA 415:18, I (supp), respectively, prior to issuance or delivery in New Hampshire by an insurance company. Inasmuch as the contemplated operation of the proposed amendment would remove the obligation to formulate an opinion where a group life insurance or group accident and health insurance policy does not contain in substance the provisions described in RSA 408:16 or RSA 415:18, I (supp), the Commissioner does not have the authority to adopt the proposal.

This opinion should not be construed to preclude a "deemer clause" procedure for policies which do not require the formulation of an opinion by the Commissioner as discussed in the above paragraph. However, an opinion with respect to that

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class of policies would necessarily involve a consideration of the legal sufficiency of those existing provisions of Insurance Regulation No. 4 which provide for a "deemer clause" procedure, and would therefore be beyond the scope of the question posed.

Sincerely,

Warren B. Rudman
Attorney General